



4000-01-U

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education

ACTION: Notice of decision.

SUMMARY: The Department of Education (Department) gives notice that on October 12, 2011, an arbitration panel rendered a decision in the matter of the Rutherford Beard v. Michigan Commission for the Blind, Case no. R-S/08-8.

FOR FURTHER INFORMATION CONTACT: You can obtain a copy of the full text of the arbitration panel decision from Mary Yang, U.S. Department of Education, 400 Maryland Avenue, SW., room 5162, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-6327. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

SUPPLEMENTARY INFORMATION: This arbitration panel was convened by the Department under 20 U.S.C. 107d-1(a), after receiving a complaint from the complainant, Rutherford

Beard. Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d-2(c), the Secretary publishes in the Federal Register a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Rutherford Beard (Complainant) alleged that the Michigan Commission for the Blind, the State licensing agency (SLA), violated the Act and implementing regulations in 34 CFR part 395. Specifically, Complainant alleged that the SLA violated the Act and its implementing regulations and State rules and regulations governing the Randolph-Sheppard Vending Facility Program with respect to the closing of his vending facility at the Lewis Cass Building for renovation and plumbing repairs, resulting in loss of income for the Complainant's cafeteria.

Complainant further alleged that the Lewis Cass Building Cafeteria was not a suitable location because the SLA was aware of a history of plumbing problems in the building. Consequently, when the cafeteria was closed for renovation and plumbing repairs, Complainant alleged that this was proof of the lack of suitability for a cafeteria at the Lewis Cass Building. Thus, the Complainant

requested reimbursement from the SLA for loss of income during the renovation period.

The SLA argued that the Lewis Cass Building Cafeteria was a suitable vending location and opportunity for a blind vendor. The SLA acknowledged that, while it was aware that the building had previous plumbing problems, it was not aware of the severity of the plumbing issue. Also, the SLA alleged that it had no responsibility to repair the plumbing in the Lewis Cass Building because the building was under the jurisdiction of the State's Department of Management and Budget. The SLA further alleged that Complainant, as a small business operator, had the responsibility for his own profitability. Moreover, the SLA alleged that Complainant was unable to provide evidence showing the amount of lost income during the renovation period.

Complainant filed a request with the SLA for lost income. The SLA denied Complainant's request. Subsequently, Complainant appealed this decision with the SLA by filing a request for a State fair hearing. A hearing was held and the administrative law judge (ALJ) recommended that Complainant's claim be denied. The SLA adopted the ALJ's recommendation as a final administrative agency action and Complainant's grievance was denied.

Complainant then filed a request for Federal arbitration with the Department. A hearing on this matter was held on March 16, 2011. The central issue, as determined by the arbitration panel, was whether the SLA's failure to compensate Complainant for loss of income during the renovation period of the Lewis Cass Building Cafeteria violated the Act and its implementing regulations, and State rules and regulations governing the Randolph-Sheppard Vending Facility Program.

Synopsis of the Arbitration Panel Decision

After reviewing all of the testimony and evidence, the majority of the panel found that the Lewis Cass Building Cafeteria was a suitable opportunity for Complainant and as such, Complainant was responsible for routine building maintenance. The panel majority concluded that, although the SLA was aware of the previous building plumbing problems, the SLA had no authority to repair the plumbing problems. Additionally, the panel majority found that Complainant did not provide competent evidence to support his allegation of lost income. Although Complainant had anticipated larger profits from operating a cafeteria at this location, this grievance was not substantiated by the evidence provided to the panel. Thus, the panel majority found that Complainant's estimate of \$70,000 for lost

profits was speculative and that it had no basis to rule that Complainant actually lost income or, if so, how much income Complainant lost.

One panel member concurred in part and dissented in part. This panel member concurred with the panel majority's finding that there was no evidence presented by Complainant to support reimbursement by the SLA for his alleged loss of income during the renovation period of the cafeteria. At the same time, this panel member dissented from the panel majority's findings, suggesting that it was not reasonable to place the entire burden of property-related losses or damages on operators and suggested that the SLA undertake rulemaking to clarify such situations, should they occur in the future.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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Dated: March 1, 2012

Alexa Posny,
Assistant Secretary
for Special Education and
Rehabilitative Services.

[FR Doc. 2012-5411 Filed
03/05/2012 at 8:45 am;
Publication Date: 03/06/2012]